

**Applicant:** Zitro Properties

**Agent:** Garcia/Kraemer & Associates

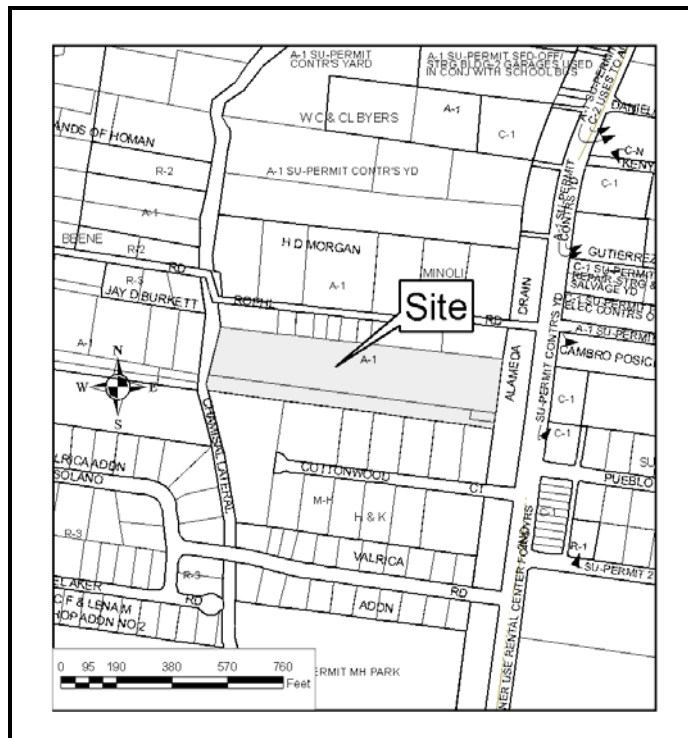
**Location:** 7413, 7417, 7421 Second St. NW

**Property Size:** 5.1 acres (approximately)

**Existing Zone:** A-1

**Proposed Zoning/SUP** A-1/Special Use Permit for PDA (Residential)

**Recommendation:** Deferral



**Summary:** This request is for a Special Use Permit for a Planned Development Area (Residential) from on a 5.1 acre (approximately) property on the west side of Second Street, about three-quarters of a mile north of Osuna Rd. The property is zoned A-1. If approved, the applicant will develop a residential subdivision 10 lots with lot sizes of around 16,000 sq. ft. (net), with a ditch the property owners to the north to develop for irrigation purposes. This request was initially for R-1 zoning, but the applicant chose to change the request due to neighbors' concerns. This request was deferred at the December 7, 2005 hearing so that the applicant could submit a complete application for a Special Use Permit for Planned Development Area in compliance with the submittal requirements of Section 18.C of the County Zoning Ordinance (Special Use Permits).

**Staff Planner:** Catherine VerEecke, Program Planner

**Attachments:**

1. Original Application
2. Area and Land Use Maps
3. Letters from neighbors & Alameda North Valley Association (for 9/7/05)
4. Letters in opposition (for 12/7/05)
5. Request for Planned Development Area (submitted 11/21/05)
6. Submittal for Planned Development Area (submitted 12/12/05)
7. Site Plan (Commissioners only)

Bernalillo County Departments and other agencies reviewed this application from 7/25/05 to 8/15/05 and from 12/13/05 to 1/9/06. Their comments were used in preparation of this report, and begin on Page 18.

**AGENDA ITEM NO.: 9**  
**County Planning Commission**  
**February 1, 2006**

CZ-50006 Garcia/Kraemer & Associates, agent for Zitro Properties, requests approval of a Special Use Permit for a Planned Development Area on Tracts 178A, 179A1 & 179A2, located at 7413, 7417 & 7421 2<sup>nd</sup> Street NW, on the west side of 2<sup>nd</sup> Street between Roehl Road and Cottonwood Court, containing approximately 5.1 acres. (D-15) (DEFERRED FROM THE SEPTEMBER 7, 2005 HEARING)

**AREA CHARACTERISTICS AND ZONING HISTORY**  
**Surrounding Zoning & Land Uses**

<b>Site</b>	<b>Zoning</b>	<b>Land use</b>
	A-1	Vacant
<b>North</b>	A-1	Single family residential
<b>South</b>	M-H	Single family residential
<b>East</b>	Lateral/ROW C-1/Special Use for Contractor's Yard	Alameda Lateral & Second St. Contractor's Yard
<b>West</b>	--	Chamisal Lateral

**BACKGROUND:**

**The Request (R-1 zoning)**

The applicant is requesting a zone change from A-1 to R-1 zoning on a 5.1 acre property located on the west side of Second St., about three-quarters of a mile north of Osuna Rd. between the Alameda Lateral and the Chamisal Lateral. The property consists of three parcels, namely a 3.5 acre rectangular lot, a 1.2 acre, long, narrow parcel, and a 2000 sq. ft. rectangular lot. The property is mainly vacant with the exception of three old residential buildings. It appears the property has also been used as pasture until recently.

Request justification.

In the response to Resolution 116-86, the applicant argues that the proposed zone change is appropriate for the property. He states a custom home-builder would construct the development with possibly 10 homes along a 50 foot road and another 4-6 lots at the end of the cul-de-sac. There will be covenants and conditions to ensure quality development to include native landscaping and access to open areas around the site to keep with the rural appearance of the site. The applicant further states he feels the request is not in conflict with the North Valley Area Plan and will be consistent with R-1 zoning. He points out that there is higher density residential development north and south of the site (one-half acre or less lots), and properties adjacent to the site to the south have mobile homes on them and beyond this is a mobile home park.

**Surrounding Land Uses and Zoning**

The subject property is located in a residential neighborhood along the west side of Second St., which has a semi-rural character. A majority of the properties to the north of the site are zoned A-1, which either have single family dwellings or are vacant. To the immediate north, the properties are original MRGCD tracts, which range from about 4000 square feet to more than one-half acre, some of which have been combined as single family dwellings. To the north of these properties are large lots (1-2 acres) with A-1 zoning. To the south is the H & K Subdivision with M-H zoning and lots ranging from about 19,000 feet to more than 2 acres. Beyond this subdivision, properties have R-1 zoning or are in the Village of Los Ranchos.

On the west side of Second St., in the immediate vicinity of the property, there are no Special Use Permits or commercially-zoned properties. However, about 700 feet to the north, a school bus yard exists under a Special Use Permit (CSU 74-10), and several other contractor's yards have been approved (e.g. CSU-20; CSU-74-10). In 1995, a Special Use Permit was granted for a Planned Development Area to allow half-acre single-family residential dwellings (CZ-94-2). In May 2005, the Board of County Commissioners approved a zone change from A-1 to R-1 on a 7 acre property about one mile to the north, nearby Ranchitos Rd. (CZ-50002).

There are more non-residential uses on the east side of Second St. (nearby the site). Properties fronting the east side of the street have C-1 zoning, and several of these also have Special Use Permits, mainly for Contractor's Yards (e.g., CSU-85-32). Further east, however, properties have A-1 zoning with lots of an acre or more, and to the southeast, properties have R-1 zoning with lots of about one-third of an acre. Further south, a large tract of land has M-1 zoning with a variety of industrial uses on it. Beyond this to the south is the Zia Gardens Subdivision with R-1 zoning.

## **APPLICABLE PLANS AND POLICIES:**

### **Albuquerque/Bernalillo County Comprehensive Plan**

The site is located in the Semi-Urban Area as delineated in the Albuquerque/Bernalillo County Comprehensive Plan. The principal goal for this area is to “maintain the character and identity of semi-urban areas which have environmental, social or cultural conditions limiting urban land uses.”

Policy a (Semi-Urban Area) states “Development in the Semi-Urban area shown by a Plan map shall be consistent with development limitations imposed by topography, soil conditions, groundwater quality, agricultural potential, flood potential, scenic qualities, recreation potential and existing development; overall gross density shall be up to 3 dwelling units per acre.”

- Rural area density patterns shall be more specifically defined through lower rank plans.

### **North Valley Area Plan**

This property is located within the Semi-Urban area of the North Valley Area Plan. The Plan states that properties in this area may have special soil and water limitations or scenic, agricultural, or recreational assets, with the appropriate gross density at 1 to 3 dwelling units per acre.

The property is located in the “Second Street to Fourth Street Sub-Area” of the Plan, which extends from Fourth Street in the west to the railroad in the east, and north from Montano Rd. to Paseo del Norte. The plan calls out the portion of Second St. between Osuna Rd. and Paseo del Norte as “a transitional area between the more rural to the north and the more urban environment in the south. The provision of urban services into this portion of the plan area has supported requests for higher density residential and commercial zoning.”

The Plan states that under the Comprehensive Plan Scenario residential development would be sited to retain the use of the Chamisal Lateral for irrigation of pastures and gardens. Provision of trails along the laterals would be strengthened. Under the preferred scenario, areas to the north of Montano would retain the present zoning.

Policy 4.4 of the Plan states that the County and City shall encourage rural standards for development especially within the Semi-Urban and Rural Comprehensive Plan areas of the North Valley.

Policy 2 (Land Use) states ‘The City and County shall stabilize residential zoning and land use in the North Valley Area.’ This may be accomplished through the following:

- a. Limit the location, duration, and type of new uses allowed by Special Use Permit.
- b. Cancel discontinued Special Use Permits granted where existing conditions of approval are not met and permits that are otherwise in violation of the Zoning Ordinance.
- c. Retain existing County A-1 zoning as the only Rural Agricultural zone intended to provide agricultural activities and spacious development.
- d. Require landscape buffering and other measures necessary to limit potential impacts of non-residential uses on residential areas.

- e. Retain the low density character of the North Valley.

Policy 2.2.d (Land Use) of the Plan states that “the County and City shall retain the low density character of the North Valley and that the minimum lot area for R-1 zoned land in the Rural area should be three-quarters of an acre.”

Policy 3.a (Land Use) states that “the City and County shall retain existing residential zoning on Alameda Blvd., Second Street, and on future roadway corridors.”

Policy 7.1 states the City and County shall stabilize land use to protect affordable housing and land presently zoned for housing.

- a. Maintain and expand areas zoned for residential uses including A-1, R-1, M-H
- b. Limit encroachment of non-residential uses into residential areas
- c. Encourage residential zoning of parcels with residential uses.

**New** → Policy 7.4 (Housing) states “The County and City shall remove disincentives, provide incentives and/or require housing development which meets the cluster Housing Principles of preserving open land, providing new housing at appropriate densities, lower infrastructure costs, and design flexibility and creativity.”

- b. Amend the County Zoning Ordinance to add cluster principles and to include Cluster Housing as a Special Use.
- c. Provide for densities greater than 1 dwelling unit/acre in Rural and Semi-Urban Areas through adoption of Cluster Housing Principles.

**New** → Cluster Housing Principles (North Valley Area Plan)

“The desire to preserve valley character and the need to accommodate new housing for population growth can both be accommodated through cluster development. Cluster housing principles may be applied throughout the valley in all residential development and redevelopment. The principles include: preservation of open land in perpetuity; provision of housing at densities appropriate to the existing zoning and surrounding neighborhoods; reducing required infrastructure and associated housing costs; and provision of greater flexibility and creativity in design and development of housing.” (p.121)

“Cluster or common interest housing is a method of site design for residential development that allows homes to be grouped more closely in order to retain larger amounts of contiguous open space in common ownership. This can be a method of preserving rural character and retaining visual access to open space while accommodating new residential development that meets or exceeds the number of units allowed under standard zoning. Like Village Centers, clustering requires more careful attention to design and setting than standard development forms.” (p.154)

“Cluster development which requires site planning should result in more design flexibility by allowing different lot sizes and shapes according to site features and open space location (p. 129.)”

## **Bernalillo County Zoning Ordinance**

Resolution 116-86 lists policies for evaluating a Zone Map changes and Special Use Permit applications.

- A. A proposed land use change must be found to be consistent with the health, safety, and general welfare of the residents of the County.
- B. The cost of land or other economic considerations pertaining to the applicant shall not be the determining factor for a land use change.
- C. A proposed land use change shall not be in significant conflict with adopted elements of the Comprehensive Plan or other Master Plans and amendments thereto including privately developed area plans which have been adopted by the County.
- D. Stability of the land use and zoning is desirable; therefore, the applicant must provide a sound justification for land use change. The burden is on the applicant to show why the change should be made.
- E. The applicant must demonstrate that the existing zoning is inappropriate because:
  - 1. There was an error in the original zone map.
  - 2. Changed neighborhood or community conditions justify a change in land use or
  - 3. A different use category is more advantageous to the community as articulated in the Comprehensive Plan or other County Master Plan, even though (1) and (2) above do not apply.
- F. A land use change shall not be approved where some of the permissive uses in the land use change would be harmful to adjacent property, the neighborhood or the community.
- G. A proposed land use change which, to be utilized through land development, requires major and unprogrammed capital expenditures by the County may be:
  - 1. denied due to lack of capital funds; or
  - 2. granted with the implicit understanding that the County is not bound to provide the capital improvements on any special schedule.
- H. Location on a collector or major street is not itself sufficient justification of apartment, office, or commercial zoning.
- I. A zone change request which would give a zone different from the surrounding zoning to one small area, especially when only one premises is involved, is generally called a "spot zone." Such a change of zone may be approved only when:
  - 1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted land use plan; or
  - 2. The area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or

special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone.

- J. A zone change request which would give a zone different from the surrounding zoning to a strip of land along a street is generally called a “strip zoning.” Such a change of zone may be approved only when:
1. The change will clearly facilitate revitalization of the Comprehensive Plan and any applicable adopted sector development plan or area development plan; or area of the proposed zone change is different from surrounding land because it could function as a transition between adjacent zones; because the site is not suitable for the uses allowed in any adjacent zone due to topography, traffic, or special adverse land uses nearby; or because the nature of structures already on the premises makes the site unsuitable for the uses allowed in any adjacent zone due to traffic or special adverse uses nearby.

**New → Section 18. Special Use Permit Regulations**

- A. By Special Use Permit after receipt of a recommendation from the Bernalillo County Planning Commission, the Board of County Commissioners may authorize the location of uses in any one in which they are not permitted by other sections of this ordinance; the Board of County Commissioners may likewise authorize the increase in height of buildings beyond the limits set fourth by sections of the zoning ordinance. With such permits, the Board of County Commissioners may impose such conditions and limitations as it deems necessary:
1. To ensure that the degree of compatibility of property uses which this section is intended to promote and preserve shall be maintained with respect to the special use on the particular site and consideration of existing and potential uses of property within the zone and the general area in which the use is proposed to be located.
  2. To ensure that the proper performance standards and conditions are, whenever necessary, imposed upon uses which are, or which reasonably may be expected to become, obnoxious, dangerous, offensive or injurious to the health, safety, or welfare of the public, or a portion thereof, by reason of the emission of noise, smoke, dust, fumes, vibration, odor, or other harmful or annoying substances;
  3. To preserve the utility, integrity and character of the zone in which the use will be located, without adversely affecting adjacent zones; and
  4. To ensure that the use will not be or become detrimental to the public interest, health, safety, convenience, or the general welfare.

Section 18.B.23 (Planned Development Area) states “Planned Development Area, including residential uses or mixed residential and commercial uses provided the minimum development lot area is two acres and the applicant demonstrates the need to vary height, lot area, or setback requirements due to unusual topography, lot configuration, or site features in order to

create cluster housing development, preserve visual or physical access to open space or unique site features.”

**New** → Section 5 Definitions.

*Cluster Housing Development.* “A form of development that permits a reduction in lot area and bulk requirements, provided there is no increase in the number of lots permitted under a conventional subdivision or increase in the overall density of development, and the remaining land area is devoted to open space, active recreation, or preservation of environmentally sensitive areas or agriculture.”

**ANALYSIS:**

**Surrounding Land Use and Zoning**

The applicant has requested a zone change from A-1 to R-1 zoning to allow the development of a residential subdivision with one-third acre lots. He states the development would have between 12 and 16 lots of this size.

The request could be viewed as consistent with the zoning and land uses of the area, including a variety of lot sizes and a mixture of A-1, M-H, and R-1 zoning and some M-1 zoning and Special Use Permits for both residential and non-residential uses. In addition, properties on the east side of Second St. to the south have R-1 zoning with small lots.

However, there also are a number of properties with A-1 zoning near the site, which is contrary to what the applicant is proposing. Staff is concerned that the applicant has not explained why the property should develop with the smaller (one-third acre) lots, rather than develop one acre lots under A-1 zoning. Further, granting the new request on this particular parcel appears to constitute a ‘spot zone’ as the property is not immediately adjacent to other properties with R-1 zoning.

**Plans**

The request appears to be consistent with the Comprehensive Plan and the North Valley Area Plan land use designations in the Semi-Urban area, which allows lots of a minimum of one-third of an acre. However, the North Valley Area Plan scenarios suggest that properties to the west of the Alameda Lateral extending up to the Chamisal Lateral should retain their rural appearance and low density through the use of irrigation and that properties adjacent to irrigation ditches should retain their existing A-1 zoning. The Comprehensive Plan states that particular attention should be given to properties in the Semi-Urban Area with special features such as agricultural potential and scenic qualities. The applicant has not included any of these policies in his justification and also does not explain why cluster housing, as explicated in the North Valley Area Plan, has not been chosen as an semi-rural alternative to the higher density development with no open space.

**Zoning Ordinance**

The applicant attempts to argue that this request is consistent with Resolution 116-86 of the Zoning Ordinance. He implies that “Changed neighborhood conditions” would be a justification for this request, stating that there are a variety of uses and densities in the area and that R-1 zoning could provide a kind of transition between the higher density M-H and R-1 uses to the



south and the more rural area to the north of the site. However, this is not made clear in the justification, and the contrary could hold true such that changes have not occurred significantly enough in the immediate vicinity of the site to warrant the zone change at the present time.

The justification statement also does not give any definitive evidence that this higher density use is more advantageous to the neighborhood as stated in policies or development scenarios of the North Valley Area Plan or the Comprehensive Plan. It appears instead that the property could be developed under A-1 zoning in a manner that is more consistent with the area in terms of lot size and uses than is being proposed by the applicant. It thus also appears that the request is a 'spot zone', particularly since the applicant has not demonstrated that such a zoning would facilitate the realization of any County plans.

### **Agency Comments**

Because this is a request for a zone change, Agency Comments are minimal and are oriented towards Building Permit requirements. County Zoning, Public Works, and Environmental Health comments indicate that if the site is developed, departmental regulations (e.g., water and sewer availability and connections, roads and access, grading and drainage plan, Zoning) must be followed. Existing structures on the property, which appear to be vacant, should be demolished following County Building requirements. Parks and Recreation staff point out that a mechanism should be developed (e.g., site plan, Cluster Housing) for preserving the connections between possible common open space and the Chamisal ditch, for the public and residents of the subdivision.

Planning staff has noted other problematic information in the justification, as follows: 1) It is stated that 12-14 lots would be constructed, and then that 14-16 lots would be constructed if the zone change is granted (staff calculates that only a maximum of 12-13 lots would be possible if R-1 zoning is complied with); 2) the justification indicates the subdivision to the immediate south of the site has R-1 zoning, when it actually has M-H zoning. 3) the La Cienega del Norte Subdivision, approved in 1995, is sited as comparable with the proposed development when in fact it has a Special Use Permit for a Planned Development Area, and its lot sizes range from 18,000 square feet to more than 30,000 square feet; 4) County staff has no way of enforcing on or monitoring compliance with private covenants, restrictions or other agreements, and the provision of open space is not required under the requested R-1 zoning; and 5) the statement that the number of homes to be built will be "limited" seems inappropriate when the applicant is seeking to more than triple what the existing zoning allows with no satisfactory justification.

### **Conclusion**

Although there appears to be some justification for a zone change on the subject property, staff is unable to recommend approval of the request. The applicant has not demonstrated that the existing A-1 zoning is inappropriate for the site the property, as the property itself and adjacent properties to the north have been developed with A-1 uses. The request is also a 'spot zone' as the property does not abut properties with R-1 zoning, and no justification is provided as to why it would not be a 'spot zone.' Further, no acceptable justification per the specific criteria of Resolution 116-86 has been provided, and it appears that the proposed zone change could negatively impact this particular area along Second St. where semi-rural uses still exist.

Finally, there is some concern being expressed by neighbors and Alameda North Valley Association. The letters state that the applicant has not justified the request and has not provided information to the neighbors. Such a zone change may be inappropriate for the particular area where the site is located (Attachment 3).

### **ADDITIONAL STAFF COMMENTS, DECEMBER 7, 2005**

This case was heard at the September 7, 2005 CPC hearing. Staff expressed the concern that not enough information and justification had been provided by the applicant to assess the appropriateness of the proposed R-1 zoning for the property. In addition, R-1 zoning, which allows one-third acre lots in the Semi-Urban Area, may be inappropriate because it is not adjacent to R-1 properties and constitutes a 'spot zone,' most nearby lots are larger than one-third acre, and the applicant had not provided any evidence that the zone change would facilitate the realization of any County Plan. There also was substantial neighborhood opposition to the request.

At the hearing, the agent, whose services were obtained after the application was submitted, acknowledged that additional information and justification is needed for this request and requested the case be deferred. This would allow the agent and applicant to meet with the neighbors and to develop a plan for cluster housing with various amenities such as open space. The applicant would change the request from R-1 zoning to a Special Use Permit for a Planned Development Area.

On November 21, 2005, the applicant submitted a conceptual site plan and project description for a Planned Development Area for consideration at this (December 7, 2005) hearing (rather than a zone change) (Attachment 5). However, this will require a new application for a Special Use Permit following the requirements of Section 18.C of the Zoning Ordinance.

Staff continues to recommend denial of the request for R-1 zoning for the reasons stated in the above analysis, with the following findings for denial.

Neighbors continue to oppose the request for R-1 zoning (Attachment 4).

**ADDITIONAL STAFF COMMENTS, FEBRUARY 1, 2006**

This request was deferred by the County Planning Commission at the December 7, 2005 hearing. In late November, the applicant's agent had submitted materials (justification letter, site plan, see Attachment 5) to change his request from R-1 to a Special Use Permit for a Planned Development Area (PDA). However, since the materials were received after the submittal deadline (October 24, 2005), staff did not review them. The CPC thus deferred this case to allow the applicant to submit all the materials required by Section 18.C (Special Use Permit Application Requirements) in a timely manner. Thus, the applicant submitted the revised site plan, justification, and neighborhood notification for the December 12 deadline, which did meet the minimum requirements for it to be considered at the February 1, CPC hearing.

**The Request (Special Use Permit for Planned Development Area, Residential)**

Request Details

Under the current request, the applicant is seeking approval for 10 dwelling units for a gross density of approximately two dwelling units per acre (when the existing A-1 zoning allows 1 dwelling unit per acre). The current site plan shows the lots located in a linear manner to the south and at the end of a proposed 50 foot wide public right-of-way, which end in a cul-de-sac near the Chamisal Lateral area. The lots range from about 14,600 sq. ft. square feet to 18,600 sq. ft., with an average of about 16,500, and the site plan notes state this could change, but that the minimum lot size will be about 14,560 sq. ft.

The site plan also shows a proposed earthen ditch to be located to the north of the proposed road within a 10 foot wide area, which will also serve as a buffer for the residences to the north. This ditch will tie into the Chamisal Lateral to the west and provide water for the lots to the immediate north of the proposed development along Roehl Rd. The ditch will also be separated from the new development by a CMU block wall. According to the notes on the site plan, the ditch will be constructed by the applicant, while permitting, gating, and maintenance will be the responsibility of the property owners to the north. The 10 foot wide area may be sold to the participating adjacent property owners and conveyed to them through a platting action.

Notes included on the site plan show features and restrictions that will apply to the development. Landscaping will likely be xeriscape-type and will be the responsibility of the new residents, to be built within four months of their occupancy, so that the applicant has elected not to submit a plan for this. The height of eight of the new houses will be limited to one storey; the two lots adjacent to the lateral may be two storey. Setbacks will be 20 feet in the front, 25 feet in the rear and of 10 feet on each side.

Request Justification

The applicant's agent states the request is appropriate for the subject property and is justified. He states that meetings have taken place with adjacent property owners (from Roehl Rd.), and that nearly all of the concerns have been addressed and will be incorporated in the development through the Special Use Permit mechanism. The existing A-1 zoning allows one dwelling unit per acre (net) and R-1 zoning (which allows 3 dwelling units per acre net) would have allowed between 12 and 14 dwelling units with lots of no less than one-third acre. Using

the PDA mechanism, the development would be for 10 lots.

The agent states the development meets the Planned Development Area Criteria because there are unusual or unique features of the existing lot and configuration, which would allow the applicant to vary the lot sizes. This includes the fact that the property is about 1000 feet deep and only about 200 feet wide, which also makes the property unsuitable for cluster housing. Another unique feature is that it currently does not have direct street access and will require an approved MRGCD crossing.

The agent also states the proposed configuration of the site is unusual and unique. The proposed irrigation ditch will make this development unique and rural in appearance. The configuration also is a compromise between the neighbors and the applicant and includes varied setback requirements (e.g., 25 foot rear setback), and other amenities such as a wall around the subdivision, and prohibition of recreational types of vehicles out of doors.

The agent also states that the request complies with Resolution 116-86. He states the proposed density would be a transition between the larger lots to the south with M-H zoning and the smaller lots to the north with A-1 zoning. There are also changed community conditions and the request is more advantageous to the community as articulated by the NVAP and Comprehensive Plans.

### **ANALYSIS: (For PDA)**

#### **Surrounding Land Use and Zoning**

The applicant has changed his request from a zone change (A-1 to R-1) to a Planned Development Area, in part to address the concerns of adjacent property owners who would like some limitations (e.g., height, accessory uses) on the new development. The development will now be limited to 10 dwelling units with lots that are somewhat larger than one-third acre. Thus, under the request, the applicant would be able to more than double the density of what would be allowed under the existing A-1 zoning.

The area nearby the site includes a variety of lot sizes and a mixture of A-1, M-H, and R-1 zoning and some M-1 zoning and Special Use Permits for both residential and non-residential uses. In addition, properties on the east side of Second St. to the south have R-1 zoning with small lots.

However, there also are a number of properties with A-1 zoning near the site, a number of which are one acre or more. Thus, the burden is on the applicant to justify why the property should develop with the smaller lots, rather than develop one acre lots under the existing A-1 zoning.

#### **Plans**

The North Valley Area Plan exhibits a strong preference for low density development, and maintaining the rural flavor of the North Valley, while at the same time controlling growth (Goal 2). Land use and housing policies throughout the plan seek to achieve these goals. In particular, Cluster Housing is presented as the most appropriate mechanism for increasing density and managing growth while at the same time preserving the rural features of the North Valley. The associated principles include preservation of open land in perpetuity; provision of

housing at densities appropriate to the existing zoning and surrounding neighborhoods (following the Guidelines on p. 121 of the Plan); reducing required infrastructure and associated housing costs; and provision of greater flexibility and creativity in design and development of housing.

This request does not comply with the North Valley Area Plan and proposes a development that would mainly increase the density on a property with A-1 zoning with a rural appearance to a development that resembles R-1 zoning. It does not employ policies or principles from the NVAP to justify the change, particularly those incorporating cluster housing. The explanation for this is that the neighbors and developer simply do not want it. To be sure, despite staff's suggestions to the applicant, no open space, landscaping, or design guidelines or elevations have been provided to show that this will be rural and of the quality suggested by the Plan.

It appears the main rural element of the development will be the proposed earthen ditch. In contrast to the old ditches in the MRGCD network, the earthen ditch as proposed will be excavated by the developer of the subdivision, to be conveyed to adjacent property owners to the north for them to complete it into an approved irrigation ditch. This does not appear to constitute a rural feature or compliance with either the Comprehensive Plan or the North Valley Area Plan.

### **Zoning Ordinance**

Resolution 116-86. The applicant and his agent argue that this request is consistent with Resolution 116-86 of the Zoning Ordinance. The agent states that "Changed neighborhood conditions" would be a justification for this request, but never explains what these conditions are (cf. p.3 of the justification). On the contrary, no land use changes for higher density residential uses have occurred in the immediate vicinity of the site since the 1970s to warrant the land use change at the present time. Similarly, the applicant states that the request is more advantageous to the community as articulated in the relevant County Plans and policies, but does not elaborate on this statement. No specific policies are cited, and the benefits of this development, would be limited to those property owners to the north who might gain access to a ditch on the subject property.

The agent also attempts to justify the request with reference to the small A-1 lots to the north of the property. Staff notes, however, that these old original non-conforming MRGCD tracts which typify the North Valley, which should not be used to justify a new land use or density.

Planned Development Area. The agent states that the development complies with Section 18.B.23 (Planned Development Area) because unique and unusual conditions and configuration exist, namely in terms of the existing lot shape and the proposed, special configuration of the lots that will include the irrigation ditch as a buffer from the lots to the north.

However, such a justification to allow the higher density appears not to be acceptable. First, this size and shape (long and narrow) of the existing 3 lots is fairly typical of the North Valley including the area nearby the site and not therefore is not unique. Second, the proposed lot configuration, which the agent states is unusual, is also fairly typical of the area and of R-1 zoning, referred to in the North Valley Area Plan as "linear", mainly rectangular lots along a

straight, long street often ending in a cul-de-sac (pp. 119-121). The 'shape of a lot' does not appear to be an acceptable justification for doubling a site's allowable density (as opposed to a variance to help develop one lot). Third, there is no existing unusual topography or natural site features or proposed open space that would be left undeveloped and require some form of clustering. It does not appear that for an irrigation ditch to be built for the adjacent property owners would fall within this criterion.

### **Agency Comments for PDA**

County staff and representatives from other agencies have noted issues with the site development plan. In particular, additional information is needed regarding the proposed irrigation ditch to demonstrate its feasibility and safety. Information provided on access and right-of-way is inadequate.

County Zoning staff comments indicate that lot sizes shown are incorrect as they include Public Right of way.

County Public Works has indicated to Planning staff the proposed utility easement should not be located within the Public right-of-way. 50 feet of ROW is required, as is currently shown on the site plan.

Environmental Health comments are with the Sewer and Water Availability Statement and the proposed irrigation ditch. The availability statement is not specific to the site plan so that service could be denied. Plans are too vague to show that there will not be issues with contaminants, safety, erosion, and vectors. Engineered plans should be provided to ensure there will be no such issues. Evidence of water rights for irrigation should also be provided.

MRGCD comments state that additional information will be needed regarding the construction and financial responsibilities of the irrigation ditch. Drainage will not be allowed into the Alameda Drain. No access currently exists for the site across the Alameda Drain.

Planning staff concerns:

Wall The wall separating the properties to the north and the proposed subdivision is shown on the wrong (north) side of the irrigation ditch. The beneficiaries of this ditch to the north would not be able to access it, nor would the subdivision residents.

Lot sizes are incorrect. Public Right of way cannot be counted as part of net acreage. This will result in smaller lots sizes than shown on the site plan.

Future Ownership of Irrigation Ditch. Conveyance of the lots would create split zoning on the 9 lots to the north and additional multiple owners of the Special Use Permit. No evidence has been provided that they approve of this zoning or have seen construction plans and have all agreed to the plans or their responsibilities associated with for the irrigation ditch. If this does not happen, the result will be a land use (a ditch) on the subject property that has little relation to the proposed subdivision itself, together with an increase of the gross density of the subject site.

Covenants. The justification states that 'concerns of neighbors will be addressed through Special Use Permit mechanisms' such as noise, recreational vehicles, establishment and maintenance of the irrigation ditch, maintenance of landscaping on private properties. However, covenants which would be the appropriate way of regulating the types of activities and uses on the site, as opposed to conditions of approval. County Zoning would not likely enforce on items that do not relate to the Zoning Ordinance or are the responsibility of adjacent property owners.

## CONCLUSION

Although there appears to be some support for the proposed planned development on the subject property, staff has concluded that the proposed development is not acceptable in its current form and that additional work must be done on the development plan before approval of the request can be considered.

The current request, which will than double the density of the site beyond that allowed under the existing A-1 zoning, does not appear to be justified. The main amenity for this development and irrigation ditch, which is for a few neighbors and not the proposed subdivision or the community, has not been proven to be feasible. If this fails, the applicant would in effect be left with R-1 zoning, except with restrictions in height and setback, without ever complying with the North Valley Area Plan or without ensuring a quality development or amenities for the community, that a PDA or cluster housing normally requires. Other amenities negotiated with neighbors either are minimal in relation to the density bonus that would be granted if this request were approved or may not be enforceable by County staff. Such an approval could also clear the way for other residential requests not to comply with the North Valley Area Plan.

Staff is recommending deferral of this case so that the applicant may accomplish the following:

- 1) Correct and improve upon the site as indicated above (Agency Comments)
- 2) Demonstrate the feasibility of the irrigation ditch, including more specific plans and approval from MRGCD and from all affected neighbors
- 3) Correct the road configuration in accordance with County Public Works' and Zoning comments and adjust the lot sizes
- 4) Comply with the North Valley Area Plan guidelines for higher density development in rural and semi-urban areas
- 5) Provide an acceptable justification of the development, the proposed density, per the specific criteria of Resolution 116-86 with particular reference to the North Valley Area Plan
- 6) Provide an acceptable justification for compliance with Section 18.b.23 (Planned Development Area) of the Zoning Ordinance (e.g., cluster housing, open space).

## Analysis Summary

Zoning	
Resolution 116-86	Has not adequately justified the request according to County Plans and policies. Has not demonstrated there are sufficient changed neighborhood conditions to justify the land use change and density.
Requirements	Does not appear to comply with PDA criteria.
Plans	
Comprehensive Plan	Not clear how it relates to Semi-urban designation.
Area Plan	Appears to be generally consistent with policies that call for residential uses along Second St., but makes no specific reference to North Valley Area Plan or Comprehensive Plan policies.
Other Requirements	
Environmental Health	Comply with relevant departmental requirements. Connect to Albuquerque/Bernalillo County sewer and water as prescribed in the availability statement. Provide plans/details of irrigation ditch.
Public Works	Require 50' access. Public utility easement must be separate
Zoning	Clarify which R-1 requirements will apply. Public ROW does not count towards lot size. Net lot size (not gross) should be reflected on site plan.



**FINDINGS:**

1. This request is for a zone map amendment from A-1 to R-1 on Tracts 178A, 179A1 & 179A2, located at 7413, 7417 & 7421 2<sup>nd</sup> Street NW, on the west side of 2<sup>nd</sup> Street between Roehl Road and Cottonwood Court, containing approximately 5.1 acres.
2. The property is located in the Semi-Urban Area of the Albuquerque/Bernalillo County Comprehensive Plan and the North Valley Area Plan.
3. The request does not include all necessary information and justification for the development to determine the appropriateness of the proposed land use and residential density in the context of the North Valley Area Plan.

DEFERRAL, based on the above Findings.

Catherine VerEecke  
Program Planner

## **BERNALILLO COUNTY DEPARTMENT COMMENTS**

### **Building Department:**

No adverse comments.

1/9/06

No adverse comments.

### **Environmental Health:**

Parcel UPC#-101506323014530917 has COA flat rate sewer and no declared water source. Must prove existing drinking water source.

Parcel UPC#-101506322313530915 has COA water and sewer.

11/10/05

City of Albuquerque water and sewer appears to be available to this property, where applicable availability shall be coordinated with City Public Works. A water and sewer availability statement will be required. Please contact the City LDC at 924-3989.

1/9/06

1. A current water and sewer serviceability statement has been provided. This statement is considered a general serviceability statement and is not specific to the request. This is because the applicant has not provided the utility authority with a "site plan". The utility authority doesn't know the configuration of the development proposal and the siting of the lots and the statement was issued for only one of the properties being considered in this application. The property left out of this statement is UPC # 101506322313530915.

The necessity for the site plan being provided to the utility authority is to substantiate whether or not the current utility system can support the request for number of lots and/or dwelling units as identified on the site plan provided to Bernalillo County EH Office.

There exists a problematic issue in that this application could be approved by Bernalillo County; but utility service could be denied by the Utility Authority. Thereby making the proposed lots sub-standard for well and septic tank use. This is according to the well, wastewater and subdivision ordinances of Bernalillo County.

The servicability statement presented expires in March of 2006. Provide a new site specific water and sewer "availability" statement.

2. The site plan submitted identifies an on-site irrigation ditch that is proposed to be created in this land use application. This proposal for the irrigation ditch shall address the following:
  1. The conveyance of water can occur only after proving sufficient surface water rights with the Office of the State Engineer.
    - 1a. Provide a water users list and submit to Bernalillo County EH Office.
  2. Obtain in writing from MRGCD all approvals that they will accept the "new irrigation ditch" into their system. Provide approval to Bernalillo County EH Office.
  3. Provide a detailed site plan that shows the entire irrigation ditch to scale that includes gate configuration and locations.
  4. Provide detailed engineer approved drawings of the CMU wall and foundation. The wall and foundation could degrade over time. The degradation could occur due to water saturated soils, weight distribution of the wall, sloping issues with terrain management. The irrigation canal is proposed as an unlined earthen ditch.

Additional Comments:

1. The site plan submitted identifies on-site drainage for sheetflow and/or stormwater that appears to flow from west to east into the MRGCD Alameda Drainage Canal. Obtain in writing from MRGCD all approvals that they will accept the sheetflow/stormwater into the Alameda Drainage Canal. Provide approval to Bernalillo County EH Office.
2. Provide a mosquito/vector control plan for standing water as a result of the "new" irrigation ditch and the irrigated lands to the north.
3. A grading and drainage plan shall be supplied to Bernalillo County EH Office that sufficiently addresses terrain management and onsite ponding of water that includes the proposed development and the lands to the north.
4. Sewer and or water infrastructure shall be constructed or financially guaranteed as per City of Albuquerque Water/Sewer Availability Statement prior to final plat sign off. Please coordinate this with Bernalillo County Public Works.

Zoning Enforcement Manager:

Must comply with below listed comments. There are no zoning violations on the property proposed for the zone change. No adverse comment at this time, however shall meet zoning requirements for lot sizes based on R-1/Rural area.

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1/9/06

Based on the above comments there is no adverse comments at this time.  
However plan as shown shows potential discrepancies, based on lot lines.  
Property as shown indicates encroachment into public-right- of -way on several lots.

Fire:

No comments received.

Public Works:

DRAN:

1. A grading and drainage plan shall be prepared for the entire development prior to any development, or construction permits. This grading and drainage plan will include the roadway to the Second street access and all proposed lots. A grading and drainage plan must be prepared by an engineer licensed in the State of New Mexico.

1/9/06

See previous comments. No further comment.

DRE:

1. The applicant is required to address access issues with MRGCD and NMDOT upon further development.
2. Road improvements shall conform to Bernalillo County Standards with future development of this property.

1/9/06

1. The 50 foot wide Public Right-of-way provided for this development is acceptable to Bernalillo County Public Works Division with the addition of 28 foot radius curves at the transition of the street into the cul-de-sac. However the 10 foot wide PUE is not acceptable within the 50 feet Public Street Right-of-way. Only utilities that have entered into agreement with Bernalillo County can locate their infrastructure within Public Right-of-way. The applicant should provide a separate 10 foot wide Public Utility Easement adjacent to the 50 foot Public Right-of-way.
2. MRGCD and NMDOT approval of the proposed access is required prior to Bernalillo County Public Works Division approval of the proposed access as Public Right-of-way and will be required prior to signature of the subdivision plat.
3. The applicant shall provide construction plans to Bernalillo County Public Works Division for road improvements within the Public Right-of-way for review and approval prior to signature of the subdivision plat. Curb and gutter may be required for this subdivision due to the higher density of this development. However, infrastructure improvement requirements such as these can be deferred to the subdivision platting action.

Parks & Recreation:

BCPR does not object to the proposed land use change that would accompany a change in zoning. However, common open space, Chamisal ditch access, and access by the public to the on-site open space and ditch as stated by the applicant call for a site plan to be prepared to see how these features are melded with the built environment. BCPR

recommends that a Special Use Permit for Planned Development be prepared and submitted. BCPR applauds the applicant for making these passive recreational amenities part of their proposal. These amenities will add value to the project for future residents of the cluster subdivision, as well as to members of the neighboring public who may not have easy access to the Chamisal ditch. BCPR will have no maintenance responsibilities whatsoever for any trail, open space, or other passive recreational amenity associated with this project.

February 1, 2006 Hearing:

Reviewed, no adverse comment for Special Use Permit for PDA. BCPR will have no maintenance responsibilities for the proposed irrigation ditch or landscaping associated with this development.

Sheriff's:

No comment received

## **COMMENTS FROM OTHER AGENCIES**

MRGCOG:

The Long Range Bikeway System identifies a separate trail along the western alignment of 2nd Street. Coordination should be made with the NMDOT and the County to ensure project inclusion as appropriate.

AMAFCA:

No comment.

1/9/06

No comment.

City Planning Department:

No comments received.

City Public Works:

Transportation Planning: No adverse comments.

Transportation Development: No adverse comments.

Water Resources: I have no adverse comments on any of the September CPC cases.

City Transit:

No objection.

City Open Space:

No comments received.

NMDOT

- A T.I.A will not be required.

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- A State driveway permit will be required for access to the State Road.
  - The permitting process shall be followed to obtain the permit.
- 1/9/06
- A T.I.A will not be required.
  - A State driveway permit will be required for access to the State Road.
  - The permitting process shall be followed to obtain the permit.

MRGCD

Application No. CZ-50006

1. The District has not approved a road crossing across the Alameda Drain Right-of-Way. A license must be obtained to install a road crossing.
  2. Storm water drainage from the subdivision is not allowed to discharge into the Alameda Drain. Storm water must be discharged into a public storm sewer or designed to pond within the subdivision.
  3. Final plat approval is required by MRGCD.
  4. The installation of a metal turnout gate may be required to connect to the Chamisal Lateral. Who will pay for the installation of the turnout gate?
  5. A detailed design must be prepared prior to installing a metal turnout gate and construction of the private irrigation ditch located on the north side of the proposed subdivision.
- RG/ma 1/10/06 MRGCD

Village of Los Ranchos

No comments received.

**NEIGHBORHOOD ASSOCIATIONS:**

Alameda North Valley Association